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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**NORTHERN DIVISION**

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**TOSHIKO OKUDA,**

**Plaintiff,**

**vs.**

**WYETH, et al.,**

**Defendants.**

**ORDER TRANSFERRING CASE**

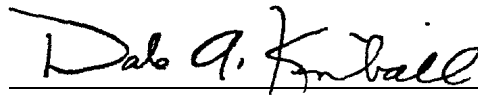
**Case No. 1:04CV80DAK**

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The above-captioned case is hereby transferred to Chief Judge Tena Campbell and all further proceedings in this case should be captioned using Case No. 1:04CV80TC.

DATED this 25<sup>th</sup> day of May, 2010.

BY THE COURT:



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DALE A. KIMBALL

United States District Judge

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**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, NORTHERN DIVISION**

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PHILLIP M. ADAMS & ASSOCIATES,  
L.L.C., a Utah Limited Liability Company,

Plaintiff,

vs.

SONY ELECTRONICS INC., WINBOND  
ELECTRONICS CORP., ASUSTEK  
COMPUTER, INC., ASUS COMPUTER  
INTERNATIONAL, MICRO-STAR  
INTERNATIONAL CORPORATION, LTD.,  
MSI COMPUTER CORPORATION, MPC  
COMPUTERS, LLC,

Defendants.

**MEMORANDUM DECISION AND  
ORDER DENYING ADAMS'S MOTION  
FOR TERMINATION OF SANCTIONS  
AGAINST MSI, MOTION TO AMEND  
COMPLAINT, AND OTHER RELIEF**

Civil No. 1:05-CV-64 TS

District Judge Ted Stewart

Magistrate Judge David Nuffer

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And Related Third-Party Claims

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Plaintiff Phillip M Adams & Associates (Adams) brings this motion<sup>1</sup> to add claims against defendants Micro-Star International Corporations, Ltd. and MSI Computer Corporation (collectively MSI). After carefully reviewing the parties' memoranda, Adams's motion is DENIED.

**BACKGROUND**

In the late 1980s, Dr. Phillip Adams identified a defect in the NEC 765A floppy disk controller (FDC) which was present in most personal computers.<sup>2</sup> Dr. Adams believed that the defect in the FDC could cause the random destruction or corruption of data without proper

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<sup>1</sup> Adams' Motion for Terminating Sanctions Against MSI, Motion to Amend Complaint, and Other Relief, docket no. 836, filed June 30, 2009.

<sup>2</sup> Second Amended Complaint at 3, docket no. 222, filed January 4, 2007.

notification to the user that data had been destroyed, which could potentially lead to serious consequences.<sup>3</sup> Since his discovery of the defect, Dr. Adams has devoted substantial time and effort to developing various solutions for FDC defects.<sup>4</sup> Dr. Adams decided to patent the computer technology resulting from his development efforts, with the first patent application being filed in 1992.<sup>5</sup> To date, there have been at least five patents issued as the result of Dr. Adams's efforts.<sup>6</sup> Each of those patents has been purportedly assigned to Phillip M. Adams & Associates L.L.C. (Adams), the Plaintiff in this case.<sup>7</sup>

The FDC-related defects have given rise to multiple lawsuits over the past several years, one in 1999 which culminated with a \$2.1 billion class-action settlement. In the aftermath of that class-action settlement, interest in Adams's technology apparently increased. Alleged misuse of that technology has given rise to Adams's instant lawsuit against a number of companies in the computer industry.

MSI manufactures and supplies motherboards for computer manufacturers such as Gateway. Adams believes that information it has acquired from a January 2009 deposition of a Gateway employee Salah Din (Din deposition) and a May 2009 deposition of MSI's founder and 30(b)(6) witness Jeans Huang (Huang deposition) made Adams aware that MSI misappropriated Adams's trade secrets.<sup>8</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 2.

<sup>5</sup> U.S. Patent No. 5,379,414.

<sup>6</sup> Second Amended Complaint at 2, docket no. 222, filed January 4, 2007. The United States patents identified by Adams, *i.e.* the patents-in-suit, are as follows: 5,379,414 titled "Systems and Methods for FDC Error Detection and Prevention" ("the '414 patent"); 5,983,002 titled "Defective Floppy Diskette Controller Detection Apparatus and Method" ("the '002 patent"); 6,401,222 titled "Defective Floppy Diskette Controller Detection Apparatus and Method" ("the '222 patent"); 6,195,767 titled "Data Corruption Detection Apparatus and Method" ("the '767 patent"); and 6,687,858 entitled "Software-Hardware Welding System" ("the '858 patent").

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Plaintiff's Memorandum in Support of Its Motion for (1) Leave to Amend, and (2) Terminating Sanctions Against MSI and Other Relief (Memorandum in Support) at vi-vii, docket no. 837, filed June 30, 2009.

Adams believes that MSI had a duty to preserve FDC-related documents because of the large class-action settlement and because Gateway alerted MSI of the potential for litigation in a letter sent by Gateway to MSI in July 2000.<sup>9</sup> Adams also believes MSI destroyed evidence of MSI's trade secret misappropriation.<sup>10</sup>

### **Relief Requested on this Motion**

Adams requests leave to amend its complaint to include the following:

- [I]n at least 2000, MSI was using Adams' Detector program to test for defective FDCs.
- The Detector Program was clearly labeled as the property of Adams, and MSI understood it to be so. MSI also knew or had reason to know that the detector program was acquired by improper means.
- Prior to such use, MSI had been warned about the potential for litigation. MSI's President also received two of Dr. Adams' patents.
- MSI destroyed everything associated with its use of the Detector program: the test software, test results, emails and Adams' patents.
- MSI's conduct violated the [Utah Uniform Trade Secrets Act].<sup>11</sup>

Adams further requests that the court grant terminating sanctions in the form of a judgment against MSI, or at a minimum, a strong adverse inference against MSI.<sup>12</sup>

### **DISCUSSION**

"The court should freely give leave [to amend] when justice so requires."<sup>13</sup> Courts generally will refuse a leave to amend if the amendment is brought after an "undue delay" or will cause the opposing party "undue prejudice."<sup>14</sup> MSI believes that Adams's amendment is brought after an undue delay, and that if Adams is allowed to amend its complaint the amendment will

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<sup>9</sup> *Id.* at ix.

<sup>10</sup> *Id.* at iii.

<sup>11</sup> Adams' Proposed Amended Complaint ¶¶ 27-31, attached as Ex. A to Adams's motion, docket no. 836.

<sup>12</sup> Memorandum in Support at 9.

<sup>13</sup> Fed. R. Civ. P. 15(a)(2).

<sup>14</sup> *Duncan v. Manager, Dep't of Safety, City and County of Denver*, 397 F.3d 1300, 1315 (10<sup>th</sup> Cir. 2005).

cause MSI undue prejudice.<sup>15</sup> “Untimeliness in itself can be a sufficient reason to deny leave to amend, particularly when the movant provides no adequate explanation for the delay.”<sup>16</sup> Also, waiting to raise an issue until the “eve of trial” has been deemed a basis to deny a motion to amend.<sup>17</sup> MSI argues that Adams should not be able to amend its complaint more than nine months after the deadline for amending pleadings has passed.<sup>18</sup>

#### Timeliness

Adams believes its delay in bringing this claim should be excused because, Adams says, it became aware that MSI misappropriated Adams’s trade secrets only after the Din and Huang depositions. Gateway’s Mr. Din, who MSI asserts is *not* a FDC expert, was asked:

Q. Were you aware of any test utility other than Dr. Adams’ test utility or ASUS’s test utility that could detect the error on [the motherboard]?

A. No, I’m not aware of any such utility.<sup>19</sup>

MSI’s Mr. Huang, in his deposition, was asked about the “Winbond utility.”

Q. Was the Winbond utility Dr. Adams’ utility, sir?

A. I’m sorry, I do not know.<sup>20</sup>

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<sup>15</sup> MSI’s Opposition to Adams’ Motion for Terminating Sanctions Against MSI, Motion to Amend Complaint and Other Relief (Opposition Memorandum) at 1, docket no. 860, filed July 20, 2009.

<sup>16</sup> *Id.* (quoting *Panis v. Mission Hills Bank*, 60 F.3d 1486, 1495 (10<sup>th</sup> Cir. 1995)).

<sup>17</sup> *Id.* at 2 (citing *Walters v. Monarch Life Ins. Co.*, 57 F.3d 899, 903 (10<sup>th</sup> Cir. 1995)).

<sup>18</sup> *Id.* at iii.

<sup>19</sup> Videotaped Deposition of Salah Din at 110, attached as Ex. D to docket no. 840, filed under seal, June 30, 2009 (objection omitted).

<sup>20</sup> Videotape Deposition upon Oral Examination of Jeans Huang at 47, attached as Ex. G to docket no. 840, filed under seal, June 30, 2009 (objections omitted).

MSI believes that Adams had sufficient evidence prior to the Din and Huang depositionsto bring a trade secret misappropriation claim, and that Adams is only using the depositions as an excuse for its failure to bring this new claim at the appropriate time. For example, after the \$2.1 billion class-action settlement, on July 26, 2000 Gateway alerted MSI to the FDC error in a letter sent by Gateway to MSI (Gateway Letter). MSI asserts, and Adams does not refute, that Gateway produced this letter to Adams in previous litigation between Adams and Gateway many years ago.<sup>21</sup> The letter stated:

We have been alerted to a potentially significant defect which may be contained in the products you are scheduled to supply to Gateway for launch in the immediate future. . . . [F]ormer IBM engineer Phillips Adams has developed and patented techniques for detecting and fixing (the error). . . . For your convenience, we have enclosed copies of his patents.<sup>22</sup>

MSI believes that the Gateway Letter makes Adams aware that MSI knew “of only one person” who developed methods for fixing the FDC problem: “Dr. Adams.”<sup>23</sup> Also, the Gateway Letter shows that Gateway sent a copy of Adams’s patents to MSI.<sup>24</sup>

MSI also believes that an email chain between Gateway and MSI (Gateway Email) gives Adams notice of a claim that MSI misappropriated Adams’s trade secrets. This email chain is a compilation of emails that were exchanged between Gateway and MSI around August 1, 2000. The chain was produced to Adams by Gateway by no later than March 2005.<sup>25</sup> The Gateway Email discusses MSI’s use of a “Winbond utility” to test for the FDC error on products that were

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<sup>21</sup> Opposition Memorandum at vii.

<sup>22</sup> July 26, 2000 Letter from Gateway’s Angel Mendez to MSI’s Joseph Hsu attached as Ex. A to Memorandum in Support (emphasis omitted and paragraphs collapsed).

<sup>23</sup> Opposition Memorandum at vii (quoting Memorandum in Support at 6).

<sup>24</sup> July 26, 2000 Letter from Gateway’s Angel Mendez to MSI’s Joseph Hsu attached as Ex. A to Memorandum in Support.

<sup>25</sup> Opposition Memorandum at v.

to be shipped to Gateway.<sup>26</sup> The Gateway Email mentions that the “Winbond utility” ran “6000 cycles” to detect errors on the tested product.<sup>27</sup> MSI says the Gateway Email alerts Adams to a potential misappropriation claim against MSI because, according to Adams, “the **only** programs which counted the number of test cycles were those created by Dr. Adams.”<sup>28</sup> Even Adams argues that the “Winbond utility” mentioned in the Gateway Email – which Adams had by 2005 – is really Adams’s program.<sup>29</sup> MSI correctly argues that if Adams believes that Adams’s technology is the only program which counted cycles, the Gateway Email should have been enough evidence to alert Adams to a misappropriation claim as early as 2005.<sup>30</sup>

Adams argues that another reason it did not bring a trade secret misappropriation claim earlier is because Gateway and MSI deceptively labeled the utility used by MSI as the “Winbond utility” to prevent Adams from discovering that MSI was actually using Adams’s technology.<sup>31</sup> However, in a previous motion, Adams claimed that ASUS misappropriated Adams’s trade secret when ASUS reverse-engineered Adams’s test program and then gave this test program to Winbond.<sup>32</sup> Thus, MSI believes that a program being labeled as the “Winbond utility” should have made Adams “more concerned, not less concerned, that Winbond may have given ASUS’ [infringing] program to MSI.”<sup>33</sup>

MSI points out that the two pieces of evidence that Adams uses to support this new claim are the Gateway Letter and Gateway Email, and that this evidence has “been in plaintiff’s

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<sup>26</sup> Email chain between Gateway and MSI at GW006385, attached as Ex. C to docket no. 840, filed under seal, June 30, 2009.

<sup>27</sup> *Id.*

<sup>28</sup> Memorandum in Support at vii (emphasis in original).

<sup>29</sup> *Id.*

<sup>30</sup> Opposition Memorandum at v.

<sup>31</sup> Memorandum in Support at 1.

<sup>32</sup> Adams’ Memorandum in Support of Its Motion for Terminating Sanctions Against ASUS Based upon ASUS’ Spoliation of Evidence of Its Piracy at v, docket no. 493, filed April 17, 2008.

<sup>33</sup> Opposition Memorandum at vi.

possession for many years.”<sup>34</sup> Based on Adams’s reliance on the Gateway Letter and Gateway Email, MSI asserts that Adams, at least by March 2005, had “strong evidence that MSI engaged in trade secrets misappropriation.”<sup>35</sup> MSI states that the recent depositions in 2009 of Mr. Din and Mr. Huang “did not advance or clarify plaintiff’s theory of misappropriation in any way.”<sup>36</sup> MSI asserts that Adams’s “claimed reliance on the [Din and Huang] deposition testimony is a thinly veiled excuse for [its] unexplained delay to assert this claim.”<sup>37</sup> MSI feels Adams is drawing unwarranted conclusions from the deposition testimony.<sup>38</sup> MSI argues Mr. Huang and Mr. Din do not state that MSI used Adams’s program.<sup>39</sup>

#### Undue Prejudice

MSI believes that adding this claim will cause MSI undue prejudice. Up to this point in this lawsuit, MSI has obtained only limited discoverable information because MSI believed that Adams’s counts against MSI would allow Adams to recover only limited damages from MSI.<sup>40</sup> MSI asserts that nearly all of the MSI parts that incorporate components accused of infringement are supplied by co-defendants, and that a resolution of the issue between Adams and the co-defendants “will effectively resolve the entire case against MSI as well.”<sup>41</sup>

To defend against the amended complaint, MSI believes it would have to engage in substantial, additional discovery.<sup>42</sup> MSI argues that because discovery is closed in this matter “MSI would be precluded from reasonable and necessary fact and expert discovery.”<sup>43</sup> MSI asserts it would need to take discovery from at least Gateway and Winbond particularly to

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<sup>34</sup> *Id.* at iii.

<sup>35</sup> *Id.* at viii.

<sup>36</sup> *Id.* at iii.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at xi.

<sup>39</sup> *Id.* at xi-xii.

<sup>40</sup> *Id.* at 3.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 3-4.

<sup>43</sup> *Id.* at viii.

defend against Adams's claim that "MSI was using Adams' Detector program to test for defective FDCs."<sup>44</sup> Adams has claimed that its utility was the only utility that could count cycles.<sup>45</sup> To defend against this claim, MSI believes it would need to take expert discovery to test Adams's theory of misappropriation, and find out if Adams's utility truly is the only technology that can count cycles.<sup>46</sup> MSI argues that this discovery would include depositions, an investigation concerning the "Winbond utility," and discovery regarding the nature and extent of testing done by other parties.<sup>47</sup>

So far in this litigation Adams has not hesitated to bring a thorough list of plausible claims against each defendant. The evidence that Adams primarily relies upon and had in its possession for many years was sufficient for Adams to assert a trade secret misappropriation claim against MSI. The Gateway Letter alerts Adams that Gateway notified MSI of Adams's technology, and that Gateway even sent copies of Adams's patents to MSI. The Gateway Email alerts Adams to the fact that the "Winbond utility" counted cycles. Adams believes his program is the only program that counts cycles. Also, Adams believes ASUS gave an illegal copy of Adams's program to Winbond. This should have made Adams aware that the "Winbond utility" could have been Adams's program. Adams chose not to assert a trade secret misappropriation claim against MSI until 2009. The Gateway Letter and Gateway Email, both of which have been in Adams's possession for many years prior to that date, provide stronger evidence of a trade secret misappropriation claim than the inconclusive statements Adams claims to rely upon in the Din and Huang depositions.

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<sup>44</sup> *Id.* (quoting Adams' Proposed Amended Complaint ¶ 27, attached as Ex. A to Adams's motion, docket no. 836).

<sup>45</sup> Memorandum in Support at vii.

<sup>46</sup> Opposition Memorandum at x.

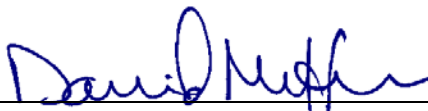
<sup>47</sup> *Id.* at 3-4.

Although a court “should freely give leave to amend when justice so requires,” Adams’s delay in bringing this claim, combined with the prejudice the amendment will cause MSI at this late stage in the case, does not permit Adams to amend its complaint. Because the sanctions Adams has sought are contingent on allowing Adams to amend its complaint, no discussion of the requested sanctions is necessary.

### **ORDER**

IT IS HEREBY ORDERED that Plaintiff’s motion<sup>48</sup> to amend its complaint and for terminating sanctions and other relief is DENIED as provided herein. IT IS FURTHER ORDERED that MSI’s motion<sup>49</sup> to file a sur-reply is MOOT. IT IS FURTHER ORDERED that MSI’s motion<sup>50</sup> for extension of time to complete discovery is MOOT.

May 26, 2010.

  
Magistrate Judge David Nuffer

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<sup>48</sup> Adams’ Motion for Terminating Sanctions Against MSI, Motion to Amend Complaint, and Other Relief, docket no. 836, filed June 30, 2009.

<sup>49</sup> MSI’s Motion to File Sur-Reply to Adams’ Reply in Support of Its Motion for (1) Leave to Amend, and (2) Terminating Sanctions Against MSI and Other Relief and Sur-Reply, docket no. 897, filed August 12, 2009.

<sup>50</sup> MSI’s Motion to Extend Discovery as to Adams’ Trade Secrets Misappropriation Claim Against MSI, docket no 997, filed September 25, 2009.

## UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

ROBERT EUGENE COOK

## JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX108CR000135-001

USM Number: 16044-081

Bel-Ami de Montreux

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 4 of the Indictment☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1343	Wire Fraud		1
18 U.S.C. § 1028A	Aggravated Identity Theft		4

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☒ Count(s) 2 and 3 of the Indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/24/2010

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

5/25/2010

Date

DEFENDANT: ROBERT EUGENE COOK  
CASE NUMBER: DUTX108CR000135-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

45 months (21 months for Count 1, and 24 months minimum mandatory for Count 4, to run consecutive to Count 1)

☒ The court makes the following recommendations to the Bureau of Prisons:

1. The Court recommends mental health treatment, and if consistent with this request,
2. Incarceration in Rochester, MN to facilitate family visitation.
3. The Court recommends that the defendant remain in federal custody to continue the treatment he is receiving there.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT EUGENE COOK  
CASE NUMBER: DUTX108CR000135-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ROBERT EUGENE COOK  
CASE NUMBER: DUTX108CR000135-001

### **ADDITIONAL SUPERVISED RELEASE TERMS**

- 1) The defendant will submit to drug/alcohol testing under a copayment plan as directed by the probation office.
- 2) The defendant shall participate in a substance-abuse evaluation and/or treatment under a copayment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
- 3) The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the primary item of order, during the course of treatment or medication.
- 4) The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: ROBERT EUGENE COOK  
 CASE NUMBER: DUTX108CR000135-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 200.00	\$	\$ 13,436.97

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Discover Card	\$6,362.37	\$6,362.37	
P. O. Box 15048			
Wilmington, DE 19850-5048			
Reference Acct: 6011-0091-2064-6547			
CarCareONE Finance of GE Capital Credit	\$2,044.80	\$2,044.80	
GE Money Bank			
950 Forrer Blvd.			
Kettering, OH 45420-1469			

<b>TOTALS</b>	\$ 13,436.97	\$ 13,436.97
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROBERT EUGENE COOK  
CASE NUMBER: DUTX108CR000135-001

### ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Capital One Bank P. O. Box 85152 Richmond, VA 23285	\$1,147.19	\$1,147.19	
Kmart/Sears Private Label Credit P. O. box 6283 Sioux Falls, SD 57117	\$3,276.38	\$3,276.38	
Chase Home Finance, LLC 3415 Vision Drive Columbus, OH 43219-6009	\$606.23	\$606.23	

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROBERT EUGENE COOK  
CASE NUMBER: DUTX108CR000135-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- Payment of criminal monetary penalties shall be made in accordance with a schedule established by the Bureau of Prisons Inmate Financial Responsibility Program while incarcerated. Upon release from imprisonment, payments will be made at a minimum rate of \$100 per month as directed by USPO.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

ALLSTATE INSURANCE COMPANY, as  
subrogee of Bruce Axtell,

Plaintiff,

vs.

ADVANCE RESTORATION SYSTEMS,  
CHOATE ELECTRICAL SERVICES,  
SPRING CREEK BUILDERS, INC., and  
EARL TAYLOR,

Defendants.

MEMORANDUM DECISION AND  
ORDER GRANTING DEFENDANT  
CHOATE ELECTRICAL SERVICES'  
MOTION FOR SUMMARY  
JUDGMENT

Case No. 1:09-CV-80 TS

This matter is before the Court on Defendant Choate Electrical Services' Motion for Summary Judgment. Plaintiff has not responded to this Motion. For the reasons discussed below, the Court will grant the Motion.

**I. Introduction**

The following facts are not in dispute. This action is based in negligence against all Defendants due to a fire caused at the Axtell residence on August 25, 2006. In December of

2005, the Axtell residence sustained damage as a result of a fire caused by the Axtells' children playing with matches in their basement. Following this initial fire, Mr. Axtell hired Advanced Restoration Systems to act as the general contractor for the restoration and repair of the residence. Advanced Systems hired Defendant Choate as a subcontractor to perform some of the electrical work on the residence. In August 2006, the Axtells were a few weeks away from taking occupancy of their home when the second fire occurred.

A few days after the fire, Plaintiff hired an expert to inspect the premises. The expert conducted testing of an enclosed abandoned light outlet box and fixture components from the attic on October 31, 2006, and again on January 13, 2007. Although described as "abandoned," the wiring from the fixture was still connected to the house power. Based on the testing, Plaintiff's electrical engineering expert prepared a report in which he stated his opinion that the fire was most likely due to electrical failure in the abandoned light fixture outlet box in the attic of the home.

After Plaintiff's experts inspected, used and analyzed the artifacts and evidence salvaged from the fire to determine the cause of the fire, the objects were disposed of at the direction of Plaintiff and were not made available to Defendants for inspection. Plaintiff admitted that the electrical light fixture, including the fixture base and wiring which it alleges caused the fire, were destroyed.<sup>1</sup>

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<sup>1</sup>Defendant Choate Memorandum in Support, Docket No. 35, at ¶ 13 (citing Pl. Resp. to Req. for Admis. at 2).

## II. Standard of Review

Summary judgment is proper if the moving party can demonstrate that there are no genuine issues of material fact and it is entitled to judgment as a matter of law.<sup>2</sup> The Court construes all facts and reasonable inferences in the light most favorable to the nonmoving party.<sup>3</sup> In considering whether genuine issues of material fact exist, the Court determines whether a reasonable jury could return a verdict for the nonmoving party in the face of all the evidence presented.<sup>4</sup> “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial, if he does not so respond, summary judgment, if appropriate, shall be entered against him.”<sup>5</sup> “All material facts of record meeting the requirements of Fed. R. Civ. P. 56 that are set forth with particularity in the statement of the movant will be deemed admitted for the purpose of summary judgment, unless specifically controverted by the statement of the opposing party identifying material facts of record meeting the requirements of Fed. R. Civ. P. 56.”<sup>6</sup>

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<sup>2</sup>See FED. R. CIV. P. 56(c).

<sup>3</sup>*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Wright v. Southwestern Bell Tel. Co.*, 925 F.2d 1288, 1292 (10th Cir. 1991).

<sup>4</sup>See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Clifton v. Craig*, 924 F.2d 182, 183 (10th Cir. 1991).

<sup>5</sup>FED. R. CIV. P. 56(e)(2).

<sup>6</sup>DUCivR 56-1(c).

### III. Discussion

Defendant Choate acknowledges he is a provider under the statute but argues that because this action is based in negligence, the statute of limitations is two years, and Plaintiff failed to bring the action within the required time period. Defendant cites Utah Code Ann. § 78-12-21.5 (2004),<sup>7</sup> which states that all actions not based in contract or warranty “shall be commenced within two years from the earlier of the date of discovery of a cause of action or the date upon which a cause of action should have been discovered through reasonable diligence.”<sup>8</sup> The one exception to this rule is for actions “for death of or bodily injury to an individual while engaged in the design, installation, or construction of an improvement,”<sup>9</sup> which is not at issue in this case. This statute applies to all causes of action against a provider that accrue after May 3, 2003.<sup>10</sup>

Defendant Choate argues that because Plaintiff’s expert found on January 13, 2007 that the cause of the fire was the abandoned electrical box, it had until January 13, 2009 to bring a cause of action, but did not do so until June 8, 2009, almost six months after the statute of limitations ran.

Moreover, because Plaintiff destroyed the evidence that led to their expert’s opinion about the cause of the fire, Plaintiff is unable to argue it was involved in an ongoing investigation as to the cause of the fire.

---

<sup>7</sup>This statute was renumbered effective February 7, 2008 , and is currently cited as UTAH CODE ANN. § 78B-2-225.

<sup>8</sup>UTAH CODE ANN. § 78-12-21.5 (2004).

<sup>9</sup>*Id.* at 78-12-21.5(2)(e).

<sup>10</sup>*Id.* at § 78-12-21.5(11).

The Court finds that it is undisputed that Plaintiff's expert opined as to the cause of the fire on January 13, 2007, and subsequently destroyed the objects of the investigation. Accordingly, Plaintiff had until January 13, 2009, to bring a cause of action, and it failed to do so in a timely manner. Moreover, Plaintiff has not responded to this Motion, and therefore the Court may grant the Motion without further notice according to DUCivR 56-1(f).

#### **IV. Conclusion**

Based on the above, it is hereby

ORDERED that Defendant Choate's Motion for Summary Judgment (Docket No. 34) is GRANTED. It is further

ORDERED that the Clerk of Court enter a judgment in favor of Defendant Choate.

DATED May 26, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

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**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, NORTHERN DIVISION**

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

MANUEL LUIS RUIZ VILLANUEVA,

Defendant.

**ORDER TO CONTINUE  
JURY TRIAL**

Case No. 1:10 CR 30 DAK

Based on the Motion to Continue the Jury Trial filed by defendant, Manuel Luis Ruiz Villanueva, in the above-entitled case, and good cause appearing, the court makes the following findings:

1. Counsel requests an additional 60 days to further investigate the facts of this case in order to effectively prepare for trial.
2. Defendant, Manuel Luis Ruiz Villanueva, is in custody and agrees with the need for a continuance of the trial.
3. Special Assistant United States Attorney Don Brown has been contacted by defense counsel and does not object to the continuance.
4. The ends of justice are best served by a continuance of the trial date, and the ends of justice outweigh the interest of the public and the Defendant to in speedy trial.

Based on the foregoing findings, it is hereby:

**ORDERED**

The 2-day Jury Trial previously scheduled to begin on May 26, 2010, is hereby continued to the 28<sup>th</sup> day of July, 2010, at 8:30 a.m. Pursuant to 18 U.S.C. § 3161(h), the Court finds that

the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth above is excluded from speedy trial computation for good cause.

Dated this 26<sup>th</sup> day of May, 2010

BY THE COURT:

  
DALE A. KIMBALL  
United States District Court Judge

United States District Court  
for the District of Utah

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 26 2010

D. MARK JONES, CLERK  
BY **Supervision**  
DEPUTY CLERK

**Petition and Order for Summons for Offender Under Supervision**

Name of Offender: **Dustin Charlie Allen**

Docket Number: **2:01-CR-00588-001-DB**

Name of Sentencing Judicial Officer: **Honorable Dee Benson**  
**U.S. District Judge**

Date of Original Sentence: **October 22, 2003**

Original Offense: **Bank Robbery by Force or Violence [18 U.S.C. 2113(a)]**

Original Sentence: **63 Months BOP custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **May 22, 2008**

**PETITIONING THE COURT**

☒ To issue a summons

**CAUSE**

The probation officer believes that the offender has violated the conditions of supervision as follows:

**Allegation No. 1:** From March 2009 to May 2010, the defendant failed to submit to drug and/or alcohol testing, as directed by the U.S. Probation Office.

Evidence in support of this allegation includes reports provided by Occupational Health Care.

**Allegation No. 2:** On January 12, 2010, the defendant submitted to a breathalyzer test, which resulted in .091 Blood Alcohol Content. A urine sample submitted that same date was positive for Ethanol.

**Allegation No. 3:** On March 24, 2010, the defendant submitted a urine sample, which tested positive for Morphine.

Evidence in support of allegations two and three include reports provided by Kroll Laboratories.

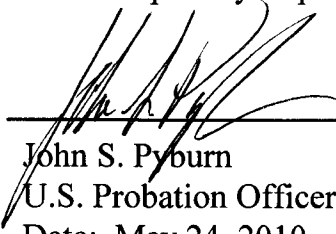
**Allegation No. 4:** From January 2010 to April 2010, the defendant failed to attend substance-abuse treatment, as directed by the U.S. Probation Office.

Evidence in support of this allegation includes reports provided by Occupational Health Care.

**Allegation No. 5:** On or about May 20, 2010, the defendant committed another federal, state, or local crime, to wit: drove under the influence of drugs or alcohol.


Evidence in support of this allegation include Utah Highway Patrol citation booking number 10026181.

I declare under penalty of perjury that the foregoing is true and correct

  
\_\_\_\_\_  
John S. Pyburn  
U.S. Probation Officer  
Date: May 24, 2010

**THE COURT ORDERS:**

- ☒ The issuance of a summons  
☐ The issuance of a warrant  
☐ No action  
☐ Other

  
\_\_\_\_\_

Honorable Dee V. Benson  
U.S. District Judge

Date: 5-25-2010

# UNITED STATES DISTRICT COURT

Central

District of

UNITED STATES OF AMERICA

V.

Garron Hatathle

**JUDGMENT IN A CRIMINAL CASE**  
(For Revocation of Probation or Supervised Release)

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 26 2010

UTAH  
BY **MARK JONES, CLERK**  
DEPUTY CLERK

Case Number: DUTX 2:02-cr-000088-001 DB

USM Number: 48757-081

Daryl P. Sam

Defendant's Attorney

## THE DEFENDANT:

☒ admitted guilt to violation of condition(s) I of the term of supervision.

☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

### Violation Number

### Nature of Violation

### Violation Ended

I.

Committed Another Federal, State or Local Crime. To wit:

11/7/2009

Assault on a Peace Officer.

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) \_\_\_\_\_ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: \_\_\_\_\_

5/25/2010

Date of Imposition of Judgment

Defendant's Date of Birth: \_\_\_\_\_

*Dee Benson*

Signature of Judge

Defendant's Residence Address: \_\_\_\_\_

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

5/26/2010

Date

Defendant's Mailing Address: \_\_\_\_\_

DEFENDANT: Garron Hatathle  
CASE NUMBER: DUTX 2:02-cr-000088-001 DB

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

TIME SERVED. The defendant shall be released on May 31, 2010.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Garron Hatathle

CASE NUMBER: DUTX 2:02-cr-000088-001 DB

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
42 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### **STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Garron Hatathle  
CASE NUMBER: DUTX 2:02-cr-000088-001 DB

Judgment—Page 4 of 4

**SPECIAL CONDITIONS OF SUPERVISION**

All previous conditions are reimposed.

United States Probation Office  
for the District of Utah

Report on Offender Under Supervision

Name of Offender: **Christopher F. Mandarino**

Docket Number: **2:05-CR-00019-001-TS**

Name of Sentencing Judicial Officer: **Honorable Ted Stewart**  
**U.S. District Judge**

Date of Original Sentence: **June 7, 2005**

Original Offense: **Bank Robbery; and Aiding and Abetting**

Original Sentence: **63 Months Bureau of Prisons Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

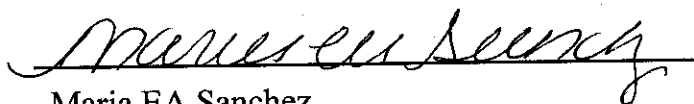
Supervision Began: **January 13, 2010**

**SUPERVISION SUMMARY**

The above-named defendant appeared before the Court on June 7, 2005, and was subsequently sentenced to a 63-month term of commitment with the U.S. Bureau of Prisons, to be followed by a 36-month term of supervised release. During the defendant's term of supervised release, he has struggled with securing long-term, suitable employment and would like to explore the possibility of furthering his education, in an attempt to further his long-term employment prospects. He has subsequently been referred to the Utah State Office of Rehabilitation (Vocational Rehabilitation) for employment and/or educational services. The defendant has been accepted for services through Vocational Rehabilitation. Vocational Rehabilitation has recently requested a copy of the defendant's Presentence Report in order to assist them in their assessment and their determination of eligibility for the defendant.

It is respectfully requested that the defendant's Presentence Report be released to Vocational Rehabilitation for assessment and determination of eligibility purposes. If the Court desires more information or another course of action, please contact me at 801-535-2732.

I declare under penalty of perjury that the foregoing is true and correct.



Maria EA Sanchez  
U.S. Probation Officer  
Date: May 21, 2010

**THE COURT:**

- ☒ Approves the request noted above  
☐ Denies the request noted above  
☐ Other

  
Honorable Ted Stewart  
U.S. District Judge

Date: 5/25/07

FILED  
U.S. DISTRICT COURT

2010 MAY 26 A 8:34

CLERK OF COURT  
2010 MAY 26  
STEFAN L. BROWN

Michael W. Homer (#1535)  
Jesse C. Trentadue (#4961)  
Brian D. Bolinder (#11032)  
SUITTER AXLAND, PLLC  
8 East Broadway, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7300  
Facsimile: (801) 532-7355

*Attorneys for Defendant Travelers Indemnity Company of Connecticut*

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IN THE UNITED STATES DISTRICT COURT

STATE OF UTAH, CENTRAL DIVISION

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JOHN F. MULLIN and DIANE L. MULLIN, :  
individuals, :

Plaintiffs, :

vs. :

TRAVELERS INDEMNITY COMPANY :  
OF CONNECTICUT, a Delaware :  
corporation, :

Defendant. :

**ORDER GRANTING  
STIPULATION AND MOTION  
FOR EXTENSION OF TIME**

Case No. 2:05CV00971 CW

Judge Clark Waddoups  
Magistrate Judge Samuel Alba

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Good cause appearing therefore, the terms of the *Stipulation and Motion for Extension of Time* are hereby approved and ordered as though fully set forth herein.

Travelers' *Reply Memorandum in Support of Motion for Protective Order* shall be due June 8, 2010.

DATED this 26<sup>th</sup> day of May, 2010.



Samuel Alba  
United States Magistrate Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

DAVID MICHAEL WOLFSON

Defendant(s),

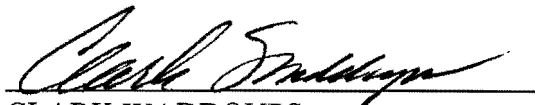
ORDER TO RELEASE PASSPORT

Case No. 2:06-CR-00280-002-CW

Based upon counsel's request at the sentencing hearing held on May 25, 2010,

It is hereby ORDERED that the Clerk of Court is to release the passport of defendant  
David Michael Wolfson.

Dated this 26<sup>th</sup> day of May, 2010

  
CLARK WADDOUPS  
U.S. District Court Judge

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

BRIGHAM YOUNG UNIVERSITY, a Utah  
Non-Profit Education Institution, and  
DANIEL L. SIMMONS, an individual,

Plaintiffs,

v.

PFIZER, a Delaware Corporation, G.D.  
SEARLE & COMPANY, a Delaware  
Corporation, G.D. SEARLE, a Delaware  
Limited Liability Company, MONSANTO  
COMPANY, a Delaware Corporation, and  
PHARMACIA, a Delaware Corporation,

Defendants.

**ORDER GRANTING IN PART  
PLAINTIFFS' MOTION TO EXPEDITE  
AND GRANTING PLAINTIFFS'  
EMERGENCY MOTION TO ADJUST  
DATE OF EXPERT DISCLOSURES**

Case No. 2:06-cv-00890-TS-BCW

Judge Ted Stewart

Judge Brooke C. Wells

Before the Court is Plaintiffs Brigham Young University's and Daniel Simmons' Motion to Extend Trial Date.<sup>1</sup> Also before the Court are two other related motions filed by Plaintiffs. A Motion for Expedited Briefing Schedule and Hearing Concerning Plaintiffs' Motion to Extend the Trial Date<sup>2</sup> and Plaintiffs' Emergency Motion to Adjust Date of Expert Disclosures.<sup>3</sup>

Plaintiffs request expedited briefing on their motion because of the "small amount of time remaining for discovery."<sup>4</sup> According to Plaintiffs, the issue needs to be resolved quickly "so that the parties can be apprised of an appropriate schedule."<sup>5</sup> Plaintiffs ask that all briefing be

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<sup>1</sup>Docket no. 418.

<sup>2</sup>Docket no. 419.

<sup>3</sup>Docket no. 425.

<sup>4</sup>Motion p. 2.

<sup>5</sup>*Id.*

complete by May 27, 2010.

Defendants oppose Plaintiffs' Motion to Expedite the Briefing Schedule arguing that the Court set trial in this matter for January 31, 2011, on April 2, 2010, more than six weeks ago, so if "Plaintiffs had concerns regarding the trial date, Plaintiffs could have filed their Motion to Extend Trial Date earlier."<sup>6</sup> Defendants assert that Plaintiffs raise numerous issues regarding discovery that need to be addressed under a normal briefing schedule.

Finally, in response Plaintiffs note the following: first they did not "sit on [their] hands for six weeks before seeking relief from the Court."<sup>7</sup> Instead, shortly after the Court issued an amended notice of trial,<sup>8</sup> Plaintiffs sought to schedule deposition dates for "Drs. Seibert and Masferrer—two of Pfizer's primary witnesses."<sup>9</sup> But, certain dates that were offered for depositions fell outside of the Amended Scheduling Order the Court entered based upon the amended trial date.<sup>10</sup>

The Court finds there is good cause to expedite the briefing on Plaintiffs' Motion to Extend Trial Date. But, the Court enters different dates than those proposed by Plaintiffs. Accordingly, Plaintiffs' Motion to Expedite Briefing is GRANTED IN PART as follows:

Defendants opposition to Plaintiffs' Motion to Extend Trial Date is due on or before May 28, 2010.

Plaintiffs reply is due on or before June 2, 2010.

The Court does not at this time render a decision as to Plaintiffs' Motion to Extend Trial

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<sup>6</sup>Op. p. 2.

<sup>7</sup>Reply p. 2.

<sup>8</sup>Docket no. 373.

<sup>9</sup>Reply p. 2.

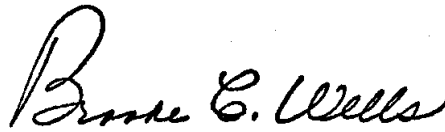
<sup>10</sup>Docket no. 406.

Date.

The Court, however, is persuaded that to avoid unfairness, Plaintiffs do not need to disclose their expert disclosures until the Court renders a decision on the Motion to Extend Trial Date. Therefore, Plaintiffs' Emergency Motion to Adjust Date of Expert Disclosures<sup>11</sup> is GRANTED.

DATED this 25th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first letter of "Brooke" is a large, stylized capital "B". The signature is positioned above a horizontal line.

BROOKE C. WELLS

United States Magistrate Judge

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<sup>11</sup>Docket no. 425.

## UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

NICHOLAS F. PECK

## JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX207CR000173-001

USM Number: 14280-081

Fred Metos

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Superceding Indictment☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1343	Fraud by Wire, Radio or Television		1s

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☒ Count(s) 2s-5s, 8s and 9s ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/24/2010

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

5/25/2010

Date

DEFENDANT: NICHOLAS F. PECK  
CASE NUMBER: DUTX207CR000173-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

96 months

☒ The court makes the following recommendations to the Bureau of Prisons:

1. Participation in the RDAP Program.
2. Incarceration in Phoenix, AZ or Florence, CO
3. Defendant should NOT be house with any of his co-defendants

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 8/2/2010.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: NICHOLAS F. PECK  
CASE NUMBER: DUTX207CR000173-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: NICHOLAS F. PECK  
CASE NUMBER: DUTX207CR000173-001

### ADDITIONAL SUPERVISED RELEASE TERMS

- 1) The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with any established payment schedule and obtains the approval of the probation office.
- 2) The defendant shall provide the probation office access to all requested financial information.
- 3) The defendant shall participate in a substance-abuse evaluation and/or treatment under a copayment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
- 4) The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: NICHOLAS F. PECK  
 CASE NUMBER: DUTX207CR000173-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$	\$

☒ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

<b>TOTALS</b>	\$ 0.00	\$ 0.00	
---------------	---------	---------	--

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

HEATHER HARRIS (11186)  
ATTORNEY FOR DEFENDANT  
43 East 400 South  
Salt Lake City, Utah 84111  
Telephone: (801) 220-0700  
Facsimile: (801) 364-3232

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD T. MCFARLAND,

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**ORDER GRANTING DEFENDANT'S  
MOTION FOR EARLY  
TERMINATION OF SUPERVISED  
RELEASE**

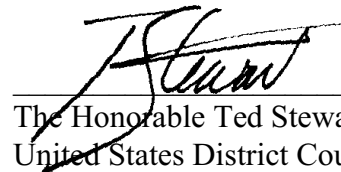
Case : 2:07-cr-403

Judge: Honorable Ted Stewart

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Based upon motion of defendant, stipulation of the parties, and in the interests of justice,  
it is HEREBY ORDERED that defendant's Motion For Early Termination Of Supervised Release is  
GRANTED.

Dated this 26th day of May, 2010.

  
\_\_\_\_\_  
The Honorable Ted Stewart  
United States District Court Judge

**RECEIVED**

Karen L. Martinez (7914)  
Thomas M. Melton (4999)  
Lindsay S. McCarthy (5216)  
Attorneys for Plaintiff  
Securities & Exchange Commission  
15 West South Temple, Suite 1800  
Salt Lake City, Utah 84101  
Tel. 801-524-5796

FILED  
U.S. DISTRICT COURT

MAY 25 2010

2010 MAY 26 A 10:30  
OFFICE OF  
JUDGE TENA CAMPBELL

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

NOVUS TECHNOLOGIES, LLC, a Utah limited liability  
company, RALPH W. THOMPSON, JR., DUANE C.  
JOHNSON, RCH2, LLC, a Utah limited liability company,  
ROBERT CASEY HALL and ERIC J. WHEELER

DEFENDANTS,

and

U.S. VENTURES, LC, a Utah limited liability company,  
U.S. VENTURES INTERNATIONAL, LLC, a Utah  
limited liability company, ROBERT L. HOLLOWAY,  
ONLINE STRATEGIES GROUP, INC., a Delaware  
corporation, and DAVID STORY

RELIEF DEFENDANTS.

Civil No. 2:07CV00235

Judge Tena Campbell

Magistrate Brooke C. Wells

---

**FINAL JUDGMENT AS TO DEFENDANT DUANE C. JOHNSON**

The Securities and Exchange Commission having filed a Complaint and Defendant  
Duane C. Johnson ("Defendant") having entered a general appearance; consented to the Court's  
jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final

Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal

service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

### III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

#### IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C § 78o(a)] by, directly or indirectly make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with Section 15(b) of the Securities Act.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$1.00, and a civil penalty in the amount of \$65,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]. Defendant shall satisfy this obligation by paying \$65,001.00 within ten business days to the Court-appointed Receiver in this matter, together with a cover letter identifying Duane C. Johnson as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in

any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: May 25, 2010

Terence Campbell  
UNITED STATES DISTRICT JUDGE

Karen L. Martinez (7914)  
Thomas M. Melton (4999)  
Lindsay S. McCarthy (5216)  
Attorneys for Plaintiff  
Securities & Exchange Commission  
15 West South Temple, Suite 1800  
Salt Lake City, Utah 84101  
Tel. 801-524-5796

FILED  
U.S. DISTRICT COURT

2010 MAY 26 A 10:39

DISTRICT OF UTAH

BY: DEPUTY CLERK

**RECEIVED**

MAY 25 2010

OFFICE OF  
JUDGE TENA CAMPBELL

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

NOVUS TECHNOLOGIES, LLC, a Utah limited liability  
company, RALPH W. THOMPSON, JR., DUANE C.  
JOHNSON, RCH2, LLC, a Utah limited liability company,  
ROBERT CASEY HALL and ERIC J. WHEELER

DEFENDANTS,

and

U.S. VENTURES, LC, a Utah limited liability company,  
U.S. VENTURES INTERNATIONAL, LLC, a Utah  
limited liability company, ROBERT L. HOLLOWAY,  
ONLINE STRATEGIES GROUP, INC., a Delaware  
corporation, and DAVID STORY

RELIEF DEFENDANTS.

Civil No. 2:07CV00235

Judge Tena Campbell

Magistrate Brooke C. Wells

---

**FINAL JUDGMENT AS TO RELIEF DEFENDANTS ROBERT L. HOLLOWAY AND  
U.S. VENTURES, LC**

The Securities and Exchange Commission having filed a Complaint and Relief  
Defendants Robert L. Holloway and U.S. Ventures, LC (collectively "Relief Defendants")  
having entered a general appearance, consented to the Court's jurisdiction over Relief

Defendants and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Relief Defendants are jointly and severally liable to repay the sum of \$1.1 million, representing profits and expenses paid by or to Relief Defendants, including overhead, as a result of Relief Defendants' trading program, together with prejudgment interest thereon in the amount of \$227,966.37, for a total of \$1,327,966.37. Based on Relief Defendants' sworn representations in their Statements of Financial Condition dated January 31, 2008 and February 5, 2010, and other documents and information submitted to the Commission, however, payment of all of the disgorgement and prejudgment interest thereon is waived. As an additional basis for this waiver, Relief Defendants have agreed to assign to the Court-appointed Receiver for the benefit of investors all right, title and interest to their claim of approximately \$427,000 plus accrued interest previously held in Relief Defendants' J.P. Morgan Chase Bank account which was frozen and liquidated by J.P. Morgan Chase Bank.

The determination to waive payment of all of the repayment obligation is contingent upon the accuracy and completeness of Relief Defendants' Statements of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Relief Defendants' representations to the Commission concerning their assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Relief Defendants, petition the Court for an order requiring

Relief Defendants to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon. In connection with any such petition, the only issue shall be whether the financial information provided by Relief Defendants was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Relief Defendants to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Relief Defendants may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

## II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within ten days of the entry of this final judgment Relief Defendants shall relinquish and assign all right, title and interest they have in the funds frozen and liquidated by J.P. Morgan Chase Bank to the Court-appointed Receiver.

## III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Relief Defendants shall comply with all of the undertakings and agreements set forth therein.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

V.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: 25 May, 2010.

James C. Cunningham  
UNITED STATES DISTRICT JUDGE

Robert Casey Hall  
PMB 305  
5525 West 13400 South  
Herriman, Utah 84096-6919

*Appearing pro se*

FILED  
U.S. DISTRICT COURT  
RECEIVED CLERK  
MAY 24 2010  
2010 MAY 26 P 1:55  
U.S. DISTRICT COURT  
OFFICE OF  
JUDGE TENA CAMPBELL  
MAY 25 2010  
BY: \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

NOVUS TECHNOLOGIES, LLC, a Utah limited liability  
company, RALPH W. THOMPSON, JR., DUANE C.  
JOHNSON, RCH2, LLC, a Utah limited liability company,  
ROBERT CASEY HALL and ERIC J. WHEELER

DEFENDANTS,

and

U.S. VENTURES, LC, a Utah limited liability company,  
U.S. VENTURES INTERNATIONAL, LLC, a Utah  
limited liability company, ROBERT L. HOLLOWAY,  
ONLINE STRATEGIES GROUP, INC., a Delaware  
corporation, and DAVID STORY

RELIEF DEFENDANTS.

**ORDER  
GRANTING  
MOTION FOR  
EXTENSION OF TIME TO  
FILE OPPOSITION TO  
SEC'S MOTION FOR  
IMPOSITION OF  
DISGORGEMENT,  
PREJUDGMENT  
INTEREST AND CIVIL  
PENALTY AGAINST  
DEFENDANT ROBERT  
CASEY HALL**

Civil No. 2:07CV00235

Judge Tena Campbell

Magistrate Brooke C. Wells

The Court received a motion to extend the time to file an opposition to the Motion for Imposition of Disgorgement, Prejudgment Interest and Civil Penalty Against Defendant Robert Casey Hall filed by Plaintiff Securities & Exchange Commission.

Based upon matters stated in Defendant Hall's motion, the Court GRANTS the extension of time to file a response and Defendant Hall shall have until June 28, 2010 to respond to the motion. The deadline set forth herein may not be modified without the approval of the Court and on a showing of good cause.

Dated this 26<sup>th</sup> day of May, 2010.

*Final  
extension*

BY THE COURT:

*Jena Campos*

U.S. District Judge

PAUL D. VEASY (3964)

KATHERINE VENTI (9318)

Parsons Behle & Latimer

One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111

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kventi@parsonsbehle.com

*Attorneys for Douglas Hewitt and Hewitt Energy Group, LLC*

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creeder@reederlugreen.com

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Telephone: (801) 521-3773

mfskolnick@kipbandchristian.com

skelson@kipbandchristian.com

*Attorneys for Rightpath Energy Holdings, LLC*

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

RIGHTPATH ENERGY HOLDINGS, LLC,  
An Arizona limited liability company,

Plaintiff,

vs.

DOUGLAS C. HEWITT, an individual; HEWITT  
ENERGY GROUP, LLC, a Utah limited liability  
company;

Defendants.

---

HEWITT ENERGY GROUP, LLC,

Counterclaimant,

vs.

Case No. 2:08cv00344

**ORDER OF DISMISSAL WITH PREJUDICE AS TO ALL  
CLAIMS**

U.S. District Judge Ted Stewart

Magistrate Judge David Nuffer

---

RIGHTPATH ENERGY HOLDINGS, LLC,

Counterclaim Defendant.

The Court, being advised that the parties have reached a Stipulation of Dismissal as to All Claims, and for other good cause shown, hereby ORDERS as follows:

1. That all claims Rightpath Energy Holdings, LLC has against Hewitt Energy Group, LLC and/or Douglas C. Hewitt be DISMISSED with prejudice;
2. That all claims Hewitt Energy Group has against Rightpath Energy Holdings be DISMISSED with prejudice;
3. That this case be STRICKEN from the docket; and
4. That each party bear its own respective costs and fees.

ENTERED this 25th day of May, 2010.

  
HON. TED STEWART  
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

/s/ Katherine Venti

---

PAUL D. VEASY

---

KATHERINE VENTI

PARSONS BEHLE & LATIMER

*Attorneys for Douglas C. Hewitt*

*and Hewitt Energy Group, LLC*

/s/ Michael F. Skolnick

---

MICHAEL F. SKOLNICK

---

STEPHEN D. KELSON

KIPP AND CHRISTIAN, P.C.

*Attorneys for Rightpath Energy Holdings, LLC*

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH - CENTRAL DIVISION

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

BEEHIVE TELEPHONE CO., INC., a Utah  
corporation, and BEEHIVE TELEPHONE  
CO. OF NEVADA, INC., a Nevada  
corporation,

Plaintiffs,

v.

SPRINT COMMUNICATIONS COMPANY,  
L.P., a Delaware limited partnership,

Defendant.

MAY 26 2010

D. MARK JONES, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**ORDER**

Case No. 2:08-CV-00380

Judge Dee Benson

The matter presently before the court is defendant Sprint Communications Company L.P.'s motion for leave to file its Third Amended Counterclaims and Third Party Complaint. (See Dkt. No. 90.) Based on the motion and memorandum in support, the absence of any opposition, and for good cause appearing, defendant's motion is GRANTED.

IT IS SO ORDERED.

DATED this 26th day of May, 2010.



Dee Benson  
United States District Judge

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES QUIGLEY,

Defendant.

Case #: 2:09CR00203-TS

PRELIMINARY ORDER OF  
FORFEITURE

JUDGE TED STEWART

---

IT IS HEREBY ORDERED that:

1. As a result of a guilty plea to Counts II and III of the Superseding Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d), the defendant James Quigley shall forfeit to the United States all property that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922(g)(1), including but not limited to:

- Smith & Wesson .40 caliber handgun, Serial Number: RBB1682
- Swiss 7.55 K31 rifle, Serial Number: K3107058 985453
- Mossberg Country Squire .410 shotgun, Serial Number: H193154
- Remington Model 552 Viper .22 caliber rifle, Serial Number: 3132141

- Jennings Model J22 .22 caliber rifle, Serial Number: 466687
- Associated Ammunition

2. The Court has determined that based on guilty pleas of possession of a firearm by a convicted felon, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

3. Upon entry of this Order the Attorney General, or its designee, is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its designee is authorized to commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject property.

6. Any person, other than the above named defendant, asserting a legal interest in the subject property may, within

thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing and shall be made part of the sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

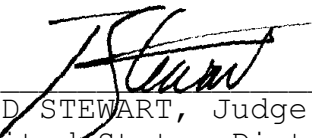
10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. 853 which is incorporated by 18 U.S.C. §

982(b) for the filing of third party petitions.

11. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 26th day of May, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART, Judge  
United States District Court

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 26 2010

BY D. MARK JONES, CLERK  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AUTUMN LEAVES SEALS,

Defendant.

TRIAL ORDER

Criminal No. 2:09-CR-00232-001-TS

The final pretrial conference in this matter is scheduled for Thursday, June 3, 2010, at 2:30 p.m.

This case is set for a 2-day trial to begin on Monday, June 14, 2010, at 8:30 a.m. **The attorneys are expected to appear in court at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.**

Counsel are instructed as follows:

**1. Court-Imposed Deadlines.**

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

**2. Jury Instructions**

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court's website. The procedure for submitting proposed jury instructions is as follows:

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

(c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) Email a copy of the proposed instructions to [utdecf\\_stewart@utd.uscourts.gov](mailto:utdecf_stewart@utd.uscourts.gov) as a Word or WordPerfect document. Include the case number in the subject line. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 2(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Federal Jury Practice and Instructions) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

### **3. Verdict Forms**

The procedure outlined for proposed jury instructions will also apply to verdict forms.

### **4. Requests for Voir Dire Examination of the Venire**

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. The court's standard voir dire questions are available from the court's website. Any such request should be submitted in writing to the court and served upon opposing counsel **at least five business days before trial**.

### **5. Motions in Limine**

All motions in limine are to be filed with the court **at least five business days before trial**, unless otherwise ordered by the court. Each such motion shall specifically identify the relief sought, and shall be accompanied by a memorandum of law and a proposed order. No brief in support of, or in opposition to, such motion shall be longer than three (3) pages in length.

### **6. Trial Briefs**

Each party should file its Trial Brief, if any, no later than five business days before trial.

### **7. Exhibit Lists/Marking Exhibits**

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available from the court's website, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Sandy Malley, at 524-6617. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

In addition, all parties are required to submit copies of their exhibits on a CD or a DVD for the court's use during trial.

## 8. Witness Lists

All parties are required to submit separate witness list for the court's use at trial. The form is available from the court's website.

## 9. Courtroom Conduct

In addition to the rules outlined in the local rules, the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:30 a.m. until 1:30 p.m., with two fifteen minute breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections and responding to objections to evidence, counsel should state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402." or "Objection . . . hearsay and inadmissible under Rule 802."

(f) Sidebar conferences are discouraged and will not be allowed except in **extraordinary** circumstances. Most matters requiring argument should be raised during recess. Please plan accordingly.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and not by their first or given names.

(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(l) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

#### 10. Courtroom Technology

If counsel wish to use the courtroom evidence system, they should contact the courtroom deputy **at least five business days before trial** at (801) 524-6617 to schedule an appointment to become familiar with the technology to be used during trial. Trial counsel and support staff are expected to familiarize themselves with the system, and arrange any additional technological needs.

DATED this 26th day of May, 2010.

BY THE COURT:

  
TED STEWART  
United States District Judge

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 26 2010

D. MARK JONES, CLERK  
BY [Signature]  
DEPUTY CLERK

LaMAR J WINWARD (A3528)  
JAY T. WINWARD (11806)  
Attorneys for Defendant  
150 North 200 East, Suite 204  
St. George, Utah 84770  
Telephone (435)628-1191

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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UNITED STATES OF AMERICA,	)	CLARIFICATION OF
	)	JUDGMENT
Plaintiff,	)	
vs.	)	
	)	
DON A. SCHEDLBAUER,	)	Case No. 2:09-cr-00491-RTB
Defendant.	)	Judge Robert T. Braithwaite

---

The defendant's Motion for Clarification of Judgment came before the Court on the 26 day of May, 2010, before the Honorable Robert T. Braithwaite, Federal Court Magistrate. The Court, having reviewed the file, being fully advised in the premises, and good cause appearing therefore,

The Court's Order is clarified by stating that although the defendant was ordered not to use, consume or possess any alcoholic beverages, other people who reside with the defendant can use, possess or consume alcohol. This clarification was required to assist the New Mexico probation department to understand that the defendant's family is not prohibited from consuming alcohol or

even having it on their premises without it being a violation of defendant's probation.

DATED this 26 day of May, 2010.

  
Robert T. Braithwaite,  
Federal Court Magistrate

ELECTRONIC NOTIFICATION CERTIFICATE

This is to certify that I electronically notified the following with a true and exact unsigned copy of the above and foregoing CLARIFICATION OF JUDGMENT on this \_\_\_ day of May, 2010, to:

Paul D. Kohler – paul.kohler@usdoj.gov

Laurie Richardson – Laurie.Richardson@usdoj.gov

Kathleen Preston – Kathleen.preston@usdoj.gov

\_\_\_\_\_  
Legal Assistant/Paralegal

# UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Alonso Carillo Madera

## JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX2:09-CR-00574-001 DAK

USM Number: 16381-081

Heather Harris

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment.☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 841(a)(1)	Possession of Heroin With Intent to Distribute	7/17/2009	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/25/2010

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

May 26, 2010

DEFENDANT: Alonso Carillo Madera  
CASE NUMBER: DUTX2:09-CR-00574-001 DAK

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

60 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in a federal correctional institution in California to facilitate family visitation.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Alonso Carillo Madera

CASE NUMBER: DUTX2:09-CR-00574-001 DAK

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
48 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Alonso Carillo Madera

CASE NUMBER: DUTX2:09-CR-00574-001 DAK

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally reenter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the U.S. Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the U.S. Probation Office in the District of Utah within 72 hours of arrival in the United States.

## CRIMINAL MONETARY PENALTIES

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Alonso Carillo Madera  
CASE NUMBER: DUTX2:09-CR-00574-001 DAK

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

MAY 25 2010  
D. MARK JONES, CLERK  
DEPT. OF JUSTICE

UNITED STATES OF AMERICA,

Plaintiff,

v.

TYREL REEVES,

Defendant.

Case # 2:09CR00617-DB

FINAL ORDER OF FORFEITURE

JUDGE: DEE BENSON

WHEREAS, on March 1, 2010, this Court entered a Preliminary Order of Forfeiture, ordering the Defendant to forfeit the \$2,378.00 in United States Currency, the .380 caliber Hi Point semi-automatic handgun, Serial Number: P838951, magazine and ammunition, and the Mossberg 12-gauge shotgun, Serial Number: P775243; and

WHEREAS, the United States caused to be published on the government website [www.forfeiture.gov](http://www.forfeiture.gov) notice of this forfeiture and of the intent of the United States to dispose of the property in accordance with the law and as specified in the Preliminary Order, and further notifying all third parties of their right to petition the Court within thirty (30) days for a hearing to adjudicate the validity of their alleged legal interest in the property; and

WHEREAS, notice was served upon Tyrel Reeves; and

WHEREAS, no timely petition has been filed; and

WHEREAS, the Court finds that the Defendant had an interest in the property that is subject to forfeiture pursuant to 21 U.S.C. § 853 and 18 U.S.C. § 924(d);

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

- \$2,378.00 in United States Currency
- .380 caliber Hi Point semi-automatic handgun, Serial Number: P838951, magazine and ammunition
- Mossberg 12-gauge shotgun, Serial Number: P775243

is hereby forfeited to the United States of America pursuant to 21 U.S.C. § 853 and 18 U.S.C. § 924(d).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all right, title and interest to the property described above is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law.

IT IS FURTHER ORDERED that the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order.

SO ORDERED; Dated this 25<sup>th</sup> day of May, 2010.

BY THE COURT:



DEE BENSON, Judge  
United States District Court

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

JULY 25 P 10 59

CLERK OF COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE EL DAVIS

Defendant.

ORDER TO CONTINUE FOR  
STATUS HEARING

Case No. 2:09CR 822  
Hon. Samuel Alba  
Hon. Ted Stewart

IT IS FURTHER ORDERED: based on the hearing before this Court on May 10, 2010, and the prior motion for a competency evaluation, the time between **May 10, 2010**, and the status hearing on this matter on **June 15, 2010, at 9:45 a.m.**, is excluded from the calculation under the Speedy Trial Act in order to grant defense counsel and the government sufficient time to prepare, and based on the reasons articulated in the hearing in this matter. The Court finds that such a continuance is required for effective preparation, and necessary for further review

of Mr. Davis' competency evaluation and possible change of plea. This order is granted pursuant to 18 U.S.C. § 3161(h)(1)(A) & 18 U.S.C. § 3161(h)(7)(A), and 18 U.S.C. § 3161 (h)(1)(G).

DATED this 25<sup>th</sup> day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'S. Alba', is written over a horizontal line.

SAMUEL ALBA  
United States Magistrate Judge

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

MAY 26 2010

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

BY D. MARK JONES, CLERK  
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN METCALF,

Defendant.

CASE: 2:09CR00837-DB

PRELIMINARY ORDER OF FORFEITURE

JUDGE: DEE BENSON

IT IS HEREBY ORDERED that:

1. As a result of a guilty plea to Count 1 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 2253(a)(3), the defendant John Metcalf shall forfeit to the United States all property that was proceeds of, involved in, used, or intended to be used in a violation of 18 U.S.C. § 2252A(a)(5)(B), including but not limited to:

- IBM Deskstar Hard Drive
- Barracuda Hard Drive

2. The Court has determined that based on a guilty plea of Possession of Child Pornography, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

3. Upon entry of this Order the Attorney General, or its designee, is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its designee is authorized to commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject property.

6. Any person, other than the above named defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing and shall be made part of the

sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

//This space intentionally left blank//

11. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 26<sup>th</sup> day of May, 2010.

BY THE COURT:

A handwritten signature in cursive script that reads "Dee Benson". The signature is written in black ink and is positioned above a horizontal line.

DEE BENSON, Judge  
United States District Court

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,	:	2:09 CR 842 TS
Plaintiff,	:	
vs.	:	ORDER GRANTING MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO
JOSEPH PETER MOESSER,	:	DEFENDANT’S MOTION TO DISMISS INDICTMENT
Defendant.	:	

---

This matter is before the Court on the government’s Stipulated Motion for Enlargement of Time to Respond to Defendant’s Motion to Dismiss Indictment. Based on the government’s motion, the averments contained therein, and the Defendant’s Motion to Dismiss, the Court finds that the Defendant’s Motion to Dismiss the Indictment raises substantial and complex issues of law. It therefore hereby is ORDERED that the government’s motion is granted, and the following schedule shall govern consideration of the defendant’s Motion to Dismiss the Indictment:

1. The government shall notify the Court and the defendant not later than July 7, 2010 if it will not seek, or does not obtain, a Superseding Indictment in this matter;

2. if the government does not seek, or does not obtain, a Superseding Indictment in this matter, it shall have until July 30, 2010 in which to respond to defendant's motion to dismiss;

3. if a Superseding Indictment is returned in this matter, the defendant shall have 28 days from its filing in which to amend or withdraw his motion to dismiss, or to notify the Court and the government of his intent to rely on the motion to dismiss as previously filed;


4. the government shall have 28 days from the date of the defendant's filing in which to file its response; and

5. the Court shall thereafter set the motion for argument and final disposition.

The Court further finds, based on the complexity of issues raised by the defendant's motion to dismiss, that this schedule constitutes "prompt disposition" of the defendant's motion, and therefore it is further ORDERED that all time from the filing of the motion to dismiss through its disposition is excluded from

computation of time under the Speedy Trial Act pursuant to 18 U.S.C. §  
3161(h)(1)(D).

DATED this 26th day of May, 2010.



---

TED STEWART  
United States District Judge

## UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

PRESTON JAMES LUCERO

## JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX209CR000857-001

USM Number: 16697-081

Vivian Ramirez

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm		1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/24/2010

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

5/25/2010

Date

DEFENDANT: PRESTON JAMES LUCERO  
CASE NUMBER: DUTX209CR000857-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

33 months with credit for time-served.

☒ The court makes the following recommendations to the Bureau of Prisons:

- 1) The Court recommends a facility in AZ for family visitation.
- 2) The Court recommends that defendant NOT be incarcerated in CA because of prior gang affiliations

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on \_\_\_\_\_
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: PRESTON JAMES LUCERO

CASE NUMBER: DUTX209CR000857-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: PRESTON JAMES LUCERO

CASE NUMBER: DUTX209CR000857-001

### **ADDITIONAL STANDARD CONDITIONS OF SUPERVISION**

- 1) The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.
- 2) The defendant will submit to drug/alcohol testing under a copayment plan as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection.
- 3) The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

## CRIMINAL MONETARY PENALTIES

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: PRESTON JAMES LUCERO  
CASE NUMBER: DUTX209CR000857-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:  
a Raven Arms .25 caliber semi-automatic handgun and associated ammunition.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

## UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Kevin Craig Miller

## JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX2:09CR000927-001-CW

USM Number: 16717-081

Wendy M. Lewis

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

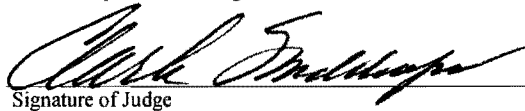
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm		1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/25/2010

Date of Imposition of Judgment



Signature of Judge

Hon. Clark Waddoups

Name of Judge

District Court Judge

Title of Judge

Date

5/26/2010

DEFENDANT: Kevin Craig Miller  
CASE NUMBER: DUTX2:09CR000927-001-CW

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

22 months, with credit for time served in Federal custody

☒ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Kevin Craig Miller  
CASE NUMBER: DUTX2:09CR000927-001-CW

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Kevin Craig Miller  
CASE NUMBER: DUTX2:09CR000927-001-CW

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.
2. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

**DEFENDANT:** Kevin Craig Miller

CASE NUMBER: DUTX2:09CR000927-001-CW

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

- ☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

<b>TOTALS</b>	\$	0.00	\$	0.00
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- ☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Kevin Craig Miller  
CASE NUMBER: DUTX2:09CR000927-001-CW

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:  
a .22-caliber Smith & Wesson pistol and .22-caliber American Eagle ammunition

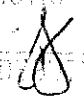
Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Peter W. Billings, A0330  
Douglas J. Payne, A4113  
FABIAN & CLENDENIN,  
A Professional Corporation  
215 South State Street, Suite 1200  
Salt Lake City, Utah 84111-2323  
Telephone: (801) 531-8900

*Attorneys for Plaintiff Gary E. Jubber, Chapter 7  
Trustee of Bankruptcy Estate of No. 1 International, Inc.  
and Assignee of Rex Falkenrath*

FILED  
U.S. DISTRICT COURT

2010 MAY 25 A. 8:56

DISTRICT CLERK  
BY: 

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re:

NO. 1 INTERNATIONAL, INC.,

Debtor,

GARY E. JUBBER, Chapter 7 Trustee of  
NO. 1 INTERNATIONAL, INC.; and  
REX FALKENRATH, an individual,

Plaintiffs,

v.

KARREN, HENDRIX, STAGG, ALLEN  
& COMPANY, P.C., ROBERT L.  
ARCHULETA, an individual, DANNY L.  
HENDRIX, an individual, and STEPHEN  
R. CAPSON, an individual,

Defendants.

**ORDER SUBSTITUTING GARY E.  
JUBBER, TRUSTEE AS ASSIGNEE AS  
REAL PARTY IN INTEREST IN PLACE  
OF REX FALKENRATH**

Civil No. 2:09-cv-00217 TS

Bankruptcy No. 08-26833 RKM

Adversary No. 09-02055

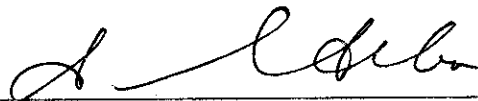
Honorable Ted Stewart  
Magistrate Judge David O. Nuffer

Based upon the *Motion to Substitute Gary E. Jubber, Trustee as Assignee as Real Party  
in Interest in Place of Rex Falkenrath* ("**Motion**"), and good cause appearing

IT IS HEREBY ORDERED that:

1. The Motion is granted;
2. Gary E. Jubber, Chapter 7 Trustee of No. 1 International, Inc. as the assignee of the claims of Rex Falkenrath ("**Falkenrath**") is hereby substituted in place of Falkenrath with respect to the claims Falkenrath asserted as a co-plaintiff in this Action; and
3. This Order shall in no way limit the rights of the Trustee to prosecute the claims of No. 1 International, Inc. in this Action as the Chapter 7 bankruptcy trustee of that entity.

DATED this 27<sup>th</sup> day of May, 2010.



---

SAMUEL ALBA  
United States Magistrate Judge

Attorneys for Plaintiff

## DISTRICT OF UTAH, CENTRAL DIVISION

Case No.: 2:09cv00245  
Judge: Tena Campbell  
Magistrate Judge: David Nuffer

GRANTS the motion and the following matters are set:

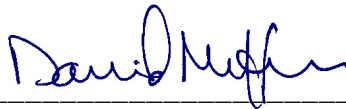
The Amended Scheduling Order [Dkt. 49] is modified such that:

- a. The cutoff date for filing a motion to amend pleadings by Plaintiff is:  
6/7/10.
- b. The cutoff date for filing a motion to join additional parties by Plaintiff is:  
6/7/10.
- c. The cutoff date for filing a motion to amend pleadings by Defendants is:  
6/21/10.
- d. The cutoff date for filing a motion to join additional parties by Defendants  
is: 6/21/10.

All other scheduling dates contained in the “Order Granting Stipulated Motion to Amended and Amended Scheduling Order” signed by David Nuffer, U.S. Magistrate Judge, on March 17, 2010, have not been modified and shall remain in full force and effect.

Dated this 22<sup>nd</sup> day of May, 2010.

BY THE COURT:



---

David Nuffer  
U.S. Magistrate Judge

FILED  
U.S. DISTRICT COURT

2009 MAY 26 AM 10:37

DISTRICT OF UTAH

BY: [Signature]  
[Signature]

R. Stephen Marshall (2097)  
Steven J. McCardell (2144)  
DURHAM JONES & PINEGAR  
111 East Broadway, Suite 900  
Salt Lake City, UT 84111  
Telephone: (801) 415-3000  
Facsimile: (801) 415-3500

Attorneys for Plaintiff OREO Corp.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

<p>OREO CORP., on Ohio corporation</p> <p>Plaintiff,</p> <p>vs.</p> <p>RIVERTON MEADOWS PARTNERS, LLC, a Nevada limited liability company; THE MERRILL COMPANIES, LLC, a California limited liability company; DAVID M. FRANK, an individual; and KAVEH KEVIN GOLSHAN, an individual.</p> <p>Defendants.</p>	<p><b>ORDER GRANTING EXTENSION OF TIME FOR PARTIES TO SUBMIT THEIR REBUTTAL EXPERT REPORTS UNDER RULE 26(a)(2) AND TO CONDUCT EXPERT DISCOVERY</b></p> <p>Civil No. 2:09-cv-380</p> <p>Judge David Sam</p>
--	--

The court, having reviewed the parties' Stipulation for Extension of Time for Parties to Submit Their Rebuttal Expert Reports under Rule 26(a)(2), hereby orders that the parties shall have to and including June 11, 2010, to submit their rebuttal expert reports under Rule 26(a)(2) of the Federal Rules of Civil Procedure. The court further orders that the parties shall have to and including July 9, 2010 to complete expert discovery.

DATED this 25<sup>th</sup> day of May, 2010.

BY THE COURT:

  
\_\_\_\_\_  
JUDGE DAVID SAM  
U.S. DISTRICT COURT

APPROVED AS TO FORM:

/s/ Michael F. Skolnick  
\_\_\_\_\_  
Michael F. Skolnick  
Kirk G. Gibbs  
KIPP AND CHRISTIAN, P.C.  
Attorneys for Defendants

RAYMOND J. ETCHEVERRY (1010)  
MARGARET NIVER MCGANN (7951)  
JULIETTE P. WHITE (9616)  
PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111

Charles A. Burke (N.C. State Bar No. 19366) *Admitted Pro Hac Vice*  
Melissa G. Ferrario (N.C. State Bar No. 36749) *Admitted Pro Hac Vice*  
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC  
One West Fourth Street  
Winston-Salem, NC 27101  
Telephone: (336) 721-3625  
Facsimile: (336) 733-8416

*Attorneys for Plaintiff Sara Lee Corporation*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

---

SARA LEE CORPORATION,	)	
	)	
Plaintiff,	)	STIPULATED ORDER GRANTING
	)	MOTION FOR LEAVE TO FILE
v.	)	OVERLENGTH MEMORANDUM IN
	)	SUPPORT OF MOTION FOR
SYCAMORE FAMILY BAKER INC.	)	SUMMARY JUDGMENT
	)	
and	)	Case No. 2:09-CV-523
	)	
LELAND SYCAMORE,	)	District Judge Dale A. Kimball
	)	
Defendants.	)	

---

The Court, having considered the parties' Stipulated Motion for Leave to File an Overlength Memorandum in Support of Motion for Partial Summary Judgment and in opposition to same, and finding good cause exists to grant the Motion, hereby GRANTS said Motion and ORDERS that Plaintiff may file its overlength Memorandum in Support of Partial Summary Judgment and Defendants may file an overlength opposition to Plaintiff's motion for partial summary judgment.

IT IS SO ORDERED.

DATED this 26<sup>th</sup> day of May, 2010.

  
\_\_\_\_\_  
HONORABLE DALE A KIMBALL  
U.S. DISTRICT COURT

Elisabeth M. McOmber (10615)  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101  
Phone: 801-257-1900  
emcomber@swlaw.com

Attorneys for Claimant Baja Marine Corporation

FILED  
U.S. DISTRICT COURT

2010 MAY 26 P 1:55

DISTRICT OF UTAH

BY: [Signature]  
CLERK OF COURT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re ARAMARK SPORTS AND  
ENTERTAINMENT SERVICES, L.L.C., a  
Delaware limited liability company, as owner  
of a certain 20' 2007 Baja Islander 202 for  
exoneration from or limitation of liability,

Plaintiff,

**ORDER FOR  
PRO HAC VICE ADMISSION OF  
ALEX B. MARCONI**

Case No. 2:09-cv-637

U.S. District Judge Tena Campbell

It appearing to the Court that Petitioner meets the *pro hac vice* admission requirements of  
DU Civ. Rule 83-1.1(d), the motion for the admission *pro hac vice* of Alex B. Marconi in the  
United States District Court, District of Utah in the subject case is GRANTED.

DATED this 26<sup>th</sup> day of May, 20 10.

Tena Campbell  
U.S. District Judge Tena Campbell

Elisabeth M. McOmber (10615)  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
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Attorneys for Claimant Baja Marine Corporation

FILED  
U.S. DISTRICT COURT

2010 MAY 26 P 1:55

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re ARAMARK SPORTS AND  
ENTERTAINMENT SERVICES, L.L.C., a  
Delaware limited liability company, as owner  
of a certain 20' 2007 Baja Islander 202 for  
exoneration from or limitation of liability,

Plaintiff,

**ORDER FOR  
PRO HAC VICE ADMISSION OF  
PATRICK X. FOWLER**

Case No. 2:09-cv-637

U.S. District Judge Tena Campbell

It appearing to the Court that Petitioner meets the *pro hac vice* admission requirements of  
DU Civ. Rule 83-1.1(d), the motion for the admission *pro hac vice* of Patrick X. Fowler in the  
United States District Court, District of Utah in the subject case is GRANTED.

DATED this 26<sup>th</sup> day of May, 2010.



U.S. District Judge Tena Campbell

Jennifer A. Brown (#9514)  
Chapman and Cutler LLP  
201 S. Main Street, Suite 2000  
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jbrown@chapman.com

Attorneys for Aurora Loan Services, LLC

FILED  
U.S. DISTRICT COURT

2010 MAY 26 PM 3:50

BY: [Signature]

CO-CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

JAMES POWELL and SHANNON POWELL,  
Plaintiffs,

vs.

AURORA LOAN SERVICES, LLC, JAMES  
H. WOODALL, and John Does 1-5,  
Defendants.

**ORDER GRANTING STIPULATED  
MOTION TO EXTEND DEADLINE TO  
ANSWER AMENDED COMPLAINT**

Civil Action No. 09-00701

The Honorable Clark Waddoups

Upon stipulated motion by the parties and good cause appearing, it is hereby ordered that Defendant Aurora Loan Services, LLC is granted an extension until and including June 10, 2010 to file its Answer to Plaintiffs' Amended Complaint.

DATED this 26<sup>th</sup> day of May, 2010.



Hon. Clark Waddoups  
District Court Judge

FILED  
U.S. DISTRICT COURT

2010 MAY 26 A 10:39

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

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Brian D. Bolinder (#11032)  
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E-mail: bbolinder@sautah.com

*Attorneys for Defendants Vernal City and Vance Norton*

---

**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

DEBRA JONES and ARDEN C. POST, )  
individually and as the natural parents of Todd )  
R. Murray; and DEBRA JONES, as personal )  
representative of the Estate of Todd R. )  
Murray, deceased, for and on behalf of the )  
heirs of Todd R. Murray; )

Plaintiffs, )

v. )

VANCE NORTON, Vernal City policy officer )  
in his official capacity and individual )  
capacities; DAVE SWENSON; CRAIG )  
YOUNG; REX OLSEN; JEFF CHUGG; )  
ANTHONY BYRON; BEVAN WATKINS; )  
TROY SLAUGH; and SEAN DAVIS, in their )  
individual capacities; VERNAL CITY; )  
BLACKBURN COMPANY, INC. d/b/a )  
THOMSON-BLACKBURN VERNAL )  
MORTUARY; and JOHN OR JANE DOES 1 )  
through 10; )

Defendants. )

**ORDER GRANTING STIPULATED  
MOTION FOR EXTENSION OF  
TIME TO FILE ANSWER TO  
SECOND AMENDED COMPLAINT**

Case No. 2:09cv00730

Judge Tena Campbell

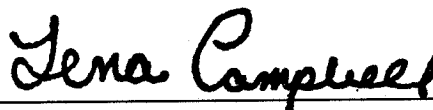
---

Good cause appearing therefore, the terms of the Stipulated Motion for Extension of Time to File Answer to Second Amended Complaint are hereby approved as though fully set forth herein.

Defendants Vernal City and Vance Norton's response to the Second Amended Complaint shall be due on or before June 9, 2010.

DATED this 25<sup>th</sup> day of May, 2010.

BY THE COURT

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style. It is positioned above a horizontal line.

The Honorable Tena Campbell  
United States District Judge

Approved as to form:

KIMBERLY D. WASHBURN, P.C.

/s/ Kimberly D. Washburn (with permission)

Kimberly D. Washburn  
*Attorneys for Plaintiffs*

Laura S. Scott (6649)  
Cory D. Sinclair (11158)  
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Telephone: (801) 532-1234  
Facsimile: (801) 536-6111

*Attorneys for Defendants Tony Ketterling and  
Canyons Management Group II, LLC d/b/a/ Re/Max  
Canyons and Re/Max Advantage Group II, LLC*

FILED **RECEIVED**  
U.S. DISTRICT COURT  
MAY 25 2010  
2010 MAY 26 A 10:29  
OFFICE OF  
**JUDGE TENA CAMPBELL**  
CLERK OF COURT  
BY: \_\_\_\_\_  
DEPUTY CLERK

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

CONTINENTAL CASUALTY COMPANY,

Plaintiff,

vs.

KIMBERLY BOWEN; TONY  
KETTERLING; CANYONS  
MANAGEMENT GROUP II, LLC, d/b/a  
RE/MAX CANYONS AND RE/MAX  
ADVANTAGE,

Defendants.

**ORDER GRANTING  
STIPULATED REQUEST TO  
EXTEND THE TIME FOR ALL  
DEFENDANTS TO FILE RESPONSE  
TO PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

Case No. 2:09-cv-810

Judge Tena Campbell

Magistrate Judge Samuel Alba

---

Based on the Stipulation to Extend Time for All Defendants to File Response to Plaintiff's Motion for Summary Judgment, and good cause appearing therefor,

IT IS HEREBY ORDERED that all Defendants be allowed until June 15, 2010, to file their Memorandum in Opposition to Plaintiff's Motion for Summary Judgment.

DATED this 25<sup>th</sup> day of May, 2010.

BY THE COURT:

Tena Campbell  
HONORABLE TENA CAMPBELL  
United States District Judge

APPROVED AS TO FORM:

EPPERSON & OWENS, P.C.

/s/ J. Kevin Murphy  
David. C. Epperson  
J. Kevin Murphy  
(signed by Filing Attorney with permission of  
Plaintiff's Attorney)  
Attorneys for Plaintiff Continental Casualty Company

J. THOMAS BOWEN

/s/ J. Thomas Bowen  
J. Thomas Bowen  
(signed by Filing Attorney with permission of  
Defendant Kimberly Bowen's Attorney)  
Attorney for Defendant Kimberly Bowen

*Prepared and proposed by*  
John A. Beckstead (0263)  
Ginger Utley (11788)  
HOLLAND & HART LLP  
222 South Main Street, Suite 2200  
Salt Lake City, Utah 84101  
Telephone: (801) 799-5800  
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jabeckstead@hollandhart.com  
gutley@hollandhart.com

*Attorneys for Plaintiff DB Private Wealth Mortgage Ltd.  
and Sherilyn A. Olsen*

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

DB PRIVATE WEALTH MORTGAGE  
LTD.,

Plaintiff,

v.

JUSTIN MARTY,

Defendant and Counterclaim  
Plaintiff,

v.

DB PRIVATE WEALTH MORTGAGE,

Counterclaim Defendants,

SHERILYN OLSEN, AND JOHN DOES  
OF UNKNOWN NUMBER,

Third Party Defendants.

**JUDGMENT DISMISSING  
COUNTERCLAIM AGAINST SHERILYN  
A. OLSEN IN EVICTION ACTION  
(Case No. 2:09-cv-999)**

Case No. 2:09-cv-887 DS

Judge David Sam

DB PRIVATE WEALTH MORTGAGE,  
LTD.,

Plaintiff,

v.

JUSTIN MARTY,

Defendant.

Case No. 2:09-cv-999  
(Consolidated)

DB Private Wealth Mortgage Ltd. ("**DB Mortgage**") filed an Unlawful Detainer Complaint against Justin Marty ("**Marty**") in the Third Judicial District Court in and for Summit County, State of Utah, on October 1, 2009, which was removed to this Court and assigned Case No. 2:09-cv-999 (the "**Eviction Action**"). Marty filed a Counterclaim in the Eviction Action naming Sherilyn A. Olsen a Counterclaim Defendant.


On February 12, 2010, Olsen filed a Motion to Dismiss the Counterclaim in the Eviction Action. On April 28, 2010, the Court issued a Memorandum Decision granting Olsen's Motion.

JUDGMENT is hereby entered as follows:

1. The Counterclaim in the Eviction Action naming Sherilyn A. Olsen is dismissed upon the merits, no cause of action, with prejudice.
2. All claims in the Eviction Action have now been resolved and adjudicated, except the pending Motion for Attorneys Fees in Eviction Action, filed March 10, 2010 (Doc. 90).

Dated this 26<sup>th</sup> day of May 2010.

BY THE COURT

  
\_\_\_\_\_  
Hon. David Sam  
U.S. District Court Judge

Approved as to form:

---

E. Craig Smay

*Attorney for Defendant Justin Marty*

*(No response was received from Counsel within  
the time frame provided for in the Rules.)*

### CERTIFICATE OF SERVICE

I certify that on May 20, 2010, I served a copy of the foregoing document to the following by:

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Fax
- ☒ E-mail

E. Craig Smay  
174 East South Temple  
Salt Lake City, UT 84111  
ecslawyer@aol.com

/s/Ginger Utley

*Prepared and proposed by*  
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Ginger Utley (11788)  
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Salt Lake City, Utah 84101  
Telephone: (801) 799-5800  
Facsimile: (801) 799-5700  
jabeckstead@hollandhart.com  
gutley@hollandhart.com

*Attorneys for Plaintiff DB Private Wealth Mortgage Ltd.  
and Sherilyn A. Olsen*

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

DB PRIVATE WEALTH MORTGAGE  
LTD.,

Plaintiff,

v.

JUSTIN MARTY,

Defendant and Counterclaim  
Plaintiff,

v.

DB PRIVATE WEALTH MORTGAGE,

Counterclaim Defendants,

SHERILYN OLSEN, AND JOHN DOES  
OF UNKNOWN NUMBER,

Third Party Defendants.

**JUDGMENT DISMISSING THIRD PARTY  
COMPLAINT AGAINST SHERILYN A.  
OLSEN IN DEFICIENCY ACTION  
(Case No. 2:09-cv-999)**

Case No. 2:09-cv-887 DS

Judge David Sam

DB PRIVATE WEALTH MORTGAGE,  
LTD.,

Plaintiff,

v.

JUSTIN MARTY,

Defendant.

Case No. 2:09-cv-999  
(Consolidated)

DB Private Wealth Mortgage (“**DB Mortgage**”) filed a Complaint for Deficiency against Justin Marty (“**Marty**”) in this Court on October 1, 2009, Case No. 2:09-cv-887 (the “**Deficiency Action**”). Marty filed a Counterclaim and Third Party Complaint in the Deficiency Action naming Sherilyn A. Olsen a Third Party Defendant.

On February 12, 2010, Olsen filed a Motion to Dismiss the Counterclaim and Third Party Complaint in the Deficiency Action. On April 28, 2010, the Court issued a Memorandum Decision granting Olsen’s Motion.

JUDGMENT is hereby entered as follows:

1. The Third Party Complaint in the Deficiency Action naming Defendant Sherilyn A. Olsen is dismissed upon the merits, no cause of action, with prejudice.
2. All claims in the Deficiency Action concerning the validity of the foreclosure sale and liability have been resolved and adjudicated. The only remaining issue is the amount owing to DB Mortgage by Marty.
3. DB Mortgage was the successful bidder for the real property sold at the foreclosure sale and is the current owner of the property. This action is a potential cloud on title to this property which impairs the ability of DB Mortgage to sell the property.

4. This Judgment, together with the Partial Judgment in Deficiency Action entered April 15, 2010 (Doc. 102), resolve all issues creating a cloud on title to the property, subject only to any appeal that may be filed. Requiring DB Mortgage to wait until adjudication of the amount owing before the time in which an appeal on the issues of validity of the foreclosure can be taken creates an undue hardship on DB Mortgage due to the cloud upon title to the property. The Court finds there is no just reason for delay and orders that this Judgment is a final judgment pursuant to F.R.C.P 54(b).

Dated this 26<sup>th</sup> day of May 2010.

BY THE COURT

David Sam  
Hon. David Sam  
U.S. District Court Judge

Approved as to form:

---

E. Craig Smay

*Attorney for Defendant Justin Marty*

*(No response was received from Counsel within  
the time frame provided for in the Rules.)*

### CERTIFICATE OF SERVICE

I certify that on May 20, 2010, I served a copy of the foregoing document to the following by:

- |                                     |                            |
|-------------------------------------|----------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail, postage prepaid |
| <input type="checkbox"/>            | Hand Delivery              |
| <input type="checkbox"/>            | Fax                        |
| <input checked="" type="checkbox"/> | E-mail                     |

E. Craig Smay  
174 East South Temple  
Salt Lake City, UT 84111  
ecslawyer@aol.com

/s/Ginger Utley\_\_\_\_\_

JOHN PAUL SOLTIS (3040)  
DAVID N. WOLF (6688)  
Assistant Utah Attorney General  
MARK SHURTLEFF (4666)  
Utah Attorney General  
Attorney for Defendants  
160 East 300 South, Sixth Floor  
P. O. Box 140856  
Salt Lake City, UT 84114-0856  
Telephone: (801) 366-0100  
E-mail: [jsoltis@utah.gov](mailto:jsoltis@utah.gov)  
[dnwolf@utah.gov](mailto:dnwolf@utah.gov)

FILED  
U.S. DISTRICT COURT

200 MAY 26 A 10:37

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200 MAY 26

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

---

GARY PHILLIPS,

Plaintiff,

v.

RICHARD GARDEN, et al,

Defendants.

**ORDER GRANTING DEFENDANTS'  
MOTION FOR EXTENSION OF TIME  
TO FILE MARTINEZ REPORT AND  
DISPOSITIVE MOTION**

Case No. 2:09cv934

Judge David Sam


---

Based on Defendants' Motion to Extend Time to File *Martinez* Report and *Dispositive Motion*, the Court hereby enters the following order:

Pursuant to DUCiv.R. 7-1 (a), Defendants' motion is GRANTED. Defendants shall file a *Martinez* Report and *Dispositive Motion* on or before July 26, 2010.

DATED this 25<sup>th</sup> day of May, 2010.

BY THE COURT:

  
\_\_\_\_\_  
DAVID SAM  
United States District Court Judge

CARLIE CHRISTENSEN, Acting United States Attorney (#0633)  
J. DREW YEATES, Assistant United States Attorney (#9811)  
CY H. CASTLE, Assistant United States Attorney (#4808)  
Attorneys for the United States of America  
185 South State Street, Suite 300, Salt Lake City, Utah 84111  
Telephone: (801) 524-5682 • Fax (801) 325-3310

---

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,  Plaintiff,  v.  CATARINO STANSBURY MARTINEZ,  Defendant.	CASE: 2:10CR00006 DAK  PRELIMINARY ORDER OF FORFEITURE  JUDGE: DALE A. KIMBALL
---	--

---

IT IS HEREBY ORDERED that:

1. As a result of a guilty plea to Count 1 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924, the defendant Catarino Stansbury Martinez shall forfeit to the United States all property that was proceeds of, involved in, used, or intended to be used in a violation of 18 U.S.C. § 922(g)(1), including but not limited to:

- Desert Eagle .45 Caliber Handgun

2. The Court has determined that based on a guilty plea of Felon in Possession of a Firearm, that the above-named property is subject to forfeiture, that the defendant had an interest in

the property, and that the government has established the requisite nexus between such property and such offense.

3. Upon entry of this Order the Attorney General, or its designee, is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its designee is authorized to commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject property.

6. Any person, other than the above named defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing and shall be made part of the sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

//This space intentionally left blank//

11. The Court shall retain jurisdiction to enforce this Order,  
and to amend it as necessary, pursuant to Fed. R. Crim. P.  
32.2(e).

Dated this 26<sup>th</sup> day of May, 2010.

BY THE COURT:

  
DALE A. KIMBALL, Judge

United States District Court

# UNITED STATES DISTRICT COURT

District of \_\_\_\_\_

UNITED STATES OF AMERICA

## JUDGMENT IN A CRIMINAL CASE

V.

Phillipe Carranza-Viveros aka  
Phillipe Caravel aka  
Alfredo Mixtega-Loeza aka  
Urbano Caro-Curiel aka Felipe Carranza  
aka Leonardo Guitierrez

Case Number: DUTX 2:10CR00167-001 TC

USM Number: 16869-081

Kris Angelos  
Defendant's Attorney

### THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/20/2010

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell  
Name and Title of Judge

Chief, United States District Court Judge

5-24-2010  
Date

DEFENDANT: Phillipe Carranza-Viveros  
CASE NUMBER: 2:10CR00167-001 TC

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

**13 Months**

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Phillipe Carranza-Viveros  
CASE NUMBER: 2:10CR00167-001 TC

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

**36 Months**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### **STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Phillipe Carranza-Viveros  
CASE NUMBER: 2:10CR00167-001 TC

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Phillipe Carranza-Viveros  
CASE NUMBER: 2:10CR00167-001 TC

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____ 0	\$ _____ 0
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Phillipe Carranza-Viveros  
CASE NUMBER: 2:10CR00167-001 TC

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7-10  
are the  
Statement of Reasons  
which will be docketed  
separately as a sealed  
document

UNITED STATES DISTRICT COURT

CENTRAL

District of

UTAH

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

Daniel Gonzalez-Romo

Case Number:

DUTX 2:10CR00168-001 TC

USM Number:

16872-081

Kristen Angelos

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Superseding Misdemeanor Information

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1325(a)(2)	Eluding Inspection by Immigration Officer		1s

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) 1 of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

05/20/2010

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name and Title of Judge

Chief United States District Court Judge

5-25-2010

Date

DEFENDANT: Daniel Gonzalez-Romo  
CASE NUMBER: 2:10CR00168-001 TC

## PROBATION

The defendant is hereby sentenced to probation for a term of :

**3 Years**

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Daniel Gonzalez-Romo  
CASE NUMBER: 2:10CR00168-001 TC

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Daniel Gonzalez-Romo  
CASE NUMBER: 2:10CR00168-001 TC

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 10.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____ 0	\$ _____ 0
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Daniel Gonzalez-Romo  
CASE NUMBER: 2:10CR00168-001 TC

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 10.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Jorge Conde-Ardon

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX2:10-CR-00199-004-DAK

USM Number: 16903-081

Benjamin McMurray

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment.

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1326	Reentry of a Previously Removed Alien	11/12/2009	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/24/2010

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

May 25, 2010

DEFENDANT: Jorge Conde-Ardon  
CASE NUMBER: DUTX2:10-CR-00199-001 DAK

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Time Served.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jorge Conde-Ardon  
CASE NUMBER: DUTX2:10-CR-00199-001 DAK

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
12 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jorge Conde-Ardon

CASE NUMBER: DUTX2:10-CR-00199-001 DAK

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally reenter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the U.S. Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the U.S. Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Jorge Conde-Ardon

CASE NUMBER: DUTX2:10-CR-00199-001 DAK

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 0.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ 0.00	\$ 0.00
--------	---------	---------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

UNITED STATES DISTRICT COURT  
District of Utah

UNITED STATES OF AMERICA

v.

Mario Alexander Torres-Banegas

Judgment in a Criminal Case

(For Revocation of Probation or Supervised Release)

Case No. DUTX2:10-CR-00246-001 DAK

USM No. 72936-179

Spencer Rice

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 2 of the term of supervision.

☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
2	Dft illegally reentered the USA and was found within the District of Utah	01/13/2010

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has not violated condition(s) 1 and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.: None

Defendant's Year of Birth: 1982

City and State of Defendant's Residence:  
Honduras

05/24/2010

Date of Imposition of Judgment

*Dale A. Kimball*

Signature of Judge

Dale A. Kimball

U.S. District Judge

Name and Title of Judge

*May 25, 2010*

Date

DEFENDANT: Mario Alexander Torres-Banegas  
CASE NUMBER: DUTX2:10-CR-00246-001 DAK

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

8 months total: 4 months to run consecutively and 4 months to run concurrently to the sentence imposed in case 2:10-CR-00200 DAK.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_ .  
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on \_\_\_\_\_ .  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Mario Alexander Torres-Banegas  
CASE NUMBER: DUTX2:10-CR-00246-001 DAK

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

0 months (No term imposed)

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Mario Alexander Torres-Banegas

CASE NUMBER: DUTX2:10-CR-00246-001 DAK

DISTRICT: District of Utah

**Judgment in a Criminal Case Personal Identification Attachment  
(Not for Public Disclosure)**

The following unredacted personal identifiers are included with the judgment transmitted to the Attorney General per 18 U.S.C. § 3612(b). A copy of this attachment shall also be provided to the attorney for the defendant, the Probation and Pretrial Services Office, and the U.S. Sentencing Commission.

Pursuant to Rule 49.1 of the Federal Rules of Criminal Procedure, however, the personal data in this attachment are not for public disclosure and must not be filed with the Clerk of the Court unless redacted or under seal, as provided in the rule.

Defendant's Soc. Sec. No.: NONE

Defendant's Date of Birth: 02/06/1982

Defendant's Residential Address: Honduras

Defendant's Mailing Address:  
(if different)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

JOHN L. BOOTH, )  
 ) **O R D E R**  
 )  
Plaintiff, ) Case No. 2:10-CV-474 TS  
 )  
v. ) District Judge Ted Stewart  
 )  
GEORGE VANDERWALL et al., )  
 )  
Defendants. )

---

Plaintiff/inmate, John L. Booth, submits a *pro se* civil rights case.<sup>1</sup> Plaintiff applies to proceed without prepaying his filing fee.<sup>2</sup> He also moves for appointed counsel and service of process.

First, regarding his *in forma pauperis* application, Plaintiff has not as required by statute submitted "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint . . . obtained from the appropriate official of each prison at which the prisoner is or was confined."<sup>3</sup> Still, the Court grants Plaintiff's *in forma pauperis* application, pending receipt of his full account statement.

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<sup>1</sup>See 42 U.S.C.S. § 1983 (2010).

<sup>2</sup>See 28 *id.* § 1915.

<sup>3</sup>See *id.* § 1915(a)(2).

Second, the Court considers Plaintiff's motion for appointed counsel. Plaintiff has no constitutional right to counsel.<sup>4</sup> The Court may, however, in its discretion appoint counsel for indigent inmates.<sup>5</sup> The applicant has the burden of showing that his claim has enough merit to justify the Court in appointing counsel.<sup>6</sup>

When deciding whether to appoint counsel, the Court studies a variety of factors, "including 'the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'"<sup>7</sup> Considering these factors, the Court concludes that (1) it is unclear at this time that Plaintiff has asserted a colorable claim; (2) the issues here are not complex; and (3) Plaintiff is not incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motion for appointed counsel.

Third, the Court denies for now Plaintiff's motion for service of process. The Court may fully screen Plaintiff's complaint at its earliest convenience and determine whether to

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<sup>4</sup>See *Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State Prison*, 823 F.2d 397, 399 (10th Cir. 1987).

<sup>5</sup>See 28 U.S.C.S. § 1915(e)(1) (2010); *Carper*, 54 F.3d at 617; *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991).

<sup>6</sup>*McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

<sup>7</sup>*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (citation omitted); accord *McCarthy*, 753 F.2d at 838-39.

dismiss it or order it to be served upon Defendants.<sup>8</sup> Plaintiff need do nothing further to trigger this process.

IT IS HEREBY ORDERED that:

(1) Plaintiff's application to proceed without prepaying his filing fee is GRANTED. So that the Court may figure Plaintiff's initial partial filing fee, Plaintiff shall have thirty days from the date of this Order to file with the Court a *certified copy* of his inmate trust fund account statement(s). If Plaintiff was held at more than one institution during the past six months, he shall file certified trust fund account statements (or institutional equivalent) from the appropriate official at each institution. The trust fund account statement(s) must show deposits and average balances for each month. If Plaintiff does not fully comply, his complaint will be dismissed.

(2) Plaintiff's request for appointed counsel is DENIED; however, if, after the case is screened, it appears that counsel may be needed or of specific help, the Court may ask an attorney to appear *pro bono* on Plaintiff's behalf.

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<sup>8</sup>See 28 U.S.C.S. § 1915A (2010).

(3) Plaintiff's motion for service of process is DENIED; however, if, after the case is fully screened, it appears that this complaint states a claim upon which relief may be granted, the Court may order service of process.

DATED this 24 day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'DN', is written over a horizontal line.

DAVID NUFFER  
United States Magistrate Judge